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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/395,455
Filing Date: September 14, 1999
Appellant(s): SARKISIAN ET AL.

Jeffrey J. Chapp
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 10, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. There are no related appeals.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments*

The appellant's statement of the status of amendments contained in the brief is correct.

(5) *Summary of Claimed Subject Matter*

The summary of claimed subject matter contained in the brief is correct.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

Claims 10 and 23 were objected to for containing allowable subject matter in the Final Office Action dated August 23, 2004. Thus, claims 10 and 23 should not be included in the list of claims for consideration under the grounds of rejection to be reviewed on Appeal.

Additionally, claim 31 was rejected in the Final Office Action dated August 23, 2004 under 35 U.S.C 103(a) as being unpatentable over *Cooper et al.*, "Building market structures from consumer preferences," *Eisner*, "Essentials of Project and Systems Engineering Management," and in further view of *McCarthy et al.*, "Basic Marketing: A Global Managerial Approach."

For convenience, Examiner has provided a copy of the Final Rejection below.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-8, 13-15, 17-21, 26 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by *Cooper et al.*, "Building market structures from consumer preferences".

As per claims 1 and 13, *Cooper et al.* discloses a method of developing a brand profile for a new product comprising the steps of:

providing a predetermined plurality of product attributes each representing an identifiable feature of a generic product under consideration (page 3, paragraphs 2-5; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values.);

grouping said product attributes in response to customer-oriented market research (page 3, paragraphs 2-5; page 7, paragraph 3; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values. Table 2 represents a category-attribute matrix.);

placing each of said attributes in an attribute class corresponding to brand personality importance (abstract; page 7, paragraphs 3 and 4; Table 2; Attributes are placed in attribute classes corresponding to brand personality.);

thereafter, generating a preferred product brand position as a function of said product attributes, including identifying a competitive set of products, and associating each of said product attributes with a preferred competitive level with respect to said competitive set (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10, paragraph 1; Figure 2; The article discloses identifying competitive groups and how products' attributes influence their competitive levels.); and

generating target product characteristics as a function of said classified product attributes and said preferred product brand position, said target product characteristics representing customer-driven objectives for each of said plurality of product attributes to be incorporated into said new product (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; The article discloses generating target

product characteristics (i.e., ideal point) based on preferred brand position and consumer preferences for certain attributes.

As per claims 2 and 14, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of providing a predetermined plurality of product attributes comprises the steps of providing a plurality of summary attributes and a clarifying definition for each of said summary attributes, said clarifying definition providing a relationship between each of said product attributes and the type of product under development (page 7, paragraphs 3 and 4; Table 2).

As per claims 3 and 15, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of providing a predetermined plurality of product attributes includes the step of providing a detailed definition for each of said product attributes, each of said detailed definitions providing a context for each attribute as it relates to the product under development (page 7, paragraphs 3 and 4; Table 2).

As per claims 4 and 17, Cooper et al. discloses a method as recited in claims 1 and 13, wherein the step of placing each of said attributes in an attribute class includes the step of placing each attribute in one of three classes wherein said first class represents attributes which differentiate the product from competing products, said second class represents important attributes, but which do not differentiate the new product from competing products, and said third class represents otherwise desirable product attributes (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; Competing products are plotted at a distance from the ideal point, and thus, classified according to their competitive levels.).

As per claims 6, 18 and 19, Cooper et al. discloses a method as recited in claims 4, 13 and 17, further comprising the step of ranking each of said product attributes, said ranking being related to each of said classes such that each of said attributes in said first class have a higher rank than each of said attributes in said second class and each of said attributes in said second class have a higher rank than each of said attributes in said third class (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claims 7 and 20, Cooper et al. discloses a method as recited in claims 1 and 13, further comprising the step of generating a primary brand position as a function of said product attributes (page 3, paragraphs 2-5).

As per claims 8 and 21, Cooper et al. discloses a method as recited in claim 1 and 13, further comprising the step of generating a present product brand position as a function of said product attributes (page 3, paragraphs 2-5).

As per claim 26, Cooper et al. discloses a method as recited in claim 19, wherein the step of ranking each of said attributes includes the step of ranking design attributes differently than usage experience attributes and driving experience attributes (page 3, paragraphs 2-5; page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claim 27, Cooper et al. discloses a method as recited in claim 26, wherein the step of classifying each of said attributes includes the step of classifying each design attribute on a scale having more gradients than the classification scale for classifying usage experience attributes and driving experience attributes (page 3,

paragraphs 2-5; page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 28, 29, 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al., "Building market structures from consumer preferences" and Eisner, "Essentials of Project and Systems Engineering Management."

As per claim 28, Cooper et al. discloses a method of developing a brand profile for a new automotive vehicle comprising the steps of:

providing a plurality of vehicle attributes, said plurality including at least attributes from each of the following groups of vehicle characteristics: usage/experience, driving experience and design (page 3, paragraphs 2-5; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values.);

grouping said product attributes in response to customer-oriented market research (page 3, paragraphs 2-5; page 7, paragraph 3; Table 2; The article discloses that consumers evaluate brands based on their underlying attribute values. Table 2 represents a category-attribute matrix.);

placing each of said attributes in an attribute class corresponding to brand personality importance (abstract; page 7, paragraphs 3 and 4; Table 2; Attributes are placed in attribute classes corresponding to brand personality.);

providing target customer characteristics (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3; The article discloses generating target product characteristics (i.e., ideal point) based on preferred brand position and consumer preferences for certain attributes.);

providing target vehicle brand image characteristics (page 3, paragraphs 2-5; Table 2);

thereafter, generating a preferred vehicle brand position as a function of said vehicle attributes, said target customer characteristics, and said target vehicle image characteristics (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10, paragraph 1; Figure 2; The article discloses identifying competitive groups and how products' attributes influence their competitive levels.); and

generating target vehicle objectives as a function of said vehicle attributes and said preferred vehicle brand position, said target vehicle objectives representing customer-driven and image-driven characteristics for each of said plurality of vehicle attributes to be incorporated into said new automotive vehicle (page 1, paragraphs 2-3; page 2, paragraphs 1 and 4; page 10, paragraph 1; Figure 2).

Cooper et al. does not expressly disclose providing a cross-functional product team. However, Eisner discloses a cross-functional team (page 315, the integrated products teams are comprised of management, marketing and sales, research and

development, engineering, production, finance and accounting). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have a cross-functional team that generates a vehicle brand position and objectives as doing so allows for various departments from differing business functions to partake in the vehicle product development, thus, promoting cross-functional consensus.

As per claim 29, Cooper et al. discloses all the limitations of the method as recited in claim 28 wherein the step of providing target customer characteristics comprises the step of providing a brand positioning summary (page 9, paragraphs 1 and 2; page 10, paragraphs 1 and 2; Table 5; Figures 2 and 3).

As per claim 30, Cooper et al. discloses a method as recited in claim 29, wherein said brand positioning summary includes target customer defining characteristics, target customer selection rationales, a summary of the new vehicles' role in the product portfolio, a competitive assessment, enduring reasons why a customer may purchase the new vehicle and pricing considerations (page 2, paragraph 6; page 3, paragraphs 2-5; page 11, paragraph 1; A competitive assessment is made along with customer selection rationales, and pricing considerations, etc.).

As per claim 33, discloses all the limitations of the method as recited in claim 28. Cooper et al. does not expressly disclose a cross-functional product team that includes at least one member from various corporate departments. It is well known in the art to create teams for marketing purposes. These teams would include people from the vehicle program management, marketing, purchasing, finance, engineering and design. It would have been obvious to one skilled in the art to have all these different types of

people on a cross-functional product team as it allows people from the various groups in the company to combine expertise in producing the vehicle. It would have been obvious at the time of the invention to have a cross-functional product team as it uses expertise from all areas of the company.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al., "Building market structures from consumer preferences" and Eisner, "Essentials of Project and Systems Engineering Management," as applied above, and in further view of McCarthy et al. "Basic Marketing: A Global Managerial Approach."

As per claim 31, Cooper and Eisner disclose the limitations of the method as recited in claim 28 and the step of providing target vehicle image characteristics. However, Cooper and Eisner do not expressly disclose the step of providing a brand bulls eye, McCarthy et al. teaches placing data characteristics in a bulls eye formation (page 47). It would be obvious for one skilled in the art to place the brand information in a bulls eye format as it is a common format for depicting information pictorially. At the time of the invention, it would have been obvious for one to use the bulls eye to show brand information as it is a user-friendly format and clearly emphasizes important vehicle image characteristics.

(7) Argument

In the Appeal Brief, Appellant provides two main arguments:

1) that Cooper does not provide a method of developing a brand profile for a new product nor does Cooper disclose many of the tasks performed to develop a brand profile, as provided in the limitations of claims 1-4, 6-8, 13-15, 17-21, 26 and 27; and

2) that with regard to claims 28-30 and 33, neither Cooper nor Eisner alone or in combination teach or suggest: (A) the placement of each of the product attributes in an attribute class corresponding to brand personality importance; (B) the generation of a preferred vehicle brand position through the use of a cross-functional product team and as a function of vehicle attributes, target customer characteristics, and target vehicle brand image characteristics; and (C) the generation of target vehicle objectives by the cross-functional product team as a function of the vehicle attributes and the preferred vehicle brand position.

In response to argument 1), Examiner respectfully disagrees. On page 7 and in Table 2, Cooper discloses a vehicle brand-attribute matrix based on customer-oriented market research. The brand data (i.e., left side of Table 2) of the brand-attribute matrix correspond to various categories of cars where each category corresponds to certain car brands. For example, in paragraph 4 of page 7, Cooper associates the brands, Camaro, Firebird, Mustang and Corvette with the car category, Small Specialty/Domestic cars. Some of the attribute data (i.e., top of Table 2) of the brand-attribute matrix include vehicle characteristics related to usage experience, driving

Art Unit: 3623

experience and design, such as front legroom, rear-seat room, engine size, horsepower, revolutions per mile and overall maintenance. Each of the attribute labels on top of Table 2 may be considered attributes classes as many values may fall within each class. For example, the car class, engine size, will have different values depending on the vehicle category. Relating back to the previous example above, in paragraph 4 of page 7, Cooper associates the brands, Camaro, Firebird, Mustang and Corvette as having the attributes of long in front (for attribute class, Front Legroom), short in rear (for attribute class, Rear-Seat Room), cost more to maintain (for attribute class, Cost Factor), etc. A matrix is essentially a grouping, thus the brand-attribute matrix in Cooper discloses providing a predetermined plurality of product attributes each representing an identifiable feature of a generic product under consideration and grouping said product attributes in response to customer-oriented market research as recited in independent claims 1 and 13.

On page 3, Cooper discloses consumers' decision-making processes related to vehicle preference. More specifically, on page 3, Cooper discloses that consumers evaluate brands on the basis of their underlying attribute values, that consumers have different ideal profiles of brands, and that consumers have different consideration sets of brands. On page 3, paragraph 2, Cooper further discloses a multi-attribute model based on consumers' evaluation rules that place importance weights on vehicle attributes. As discussed above, each attribute falls within an attribute class. Thus, each attribute in an attribute class corresponds to brand personality importance as recited in independent claims 1 and 13.

On pages 3, 9 and 10, Cooper discloses generating preferred vehicle brand positions and target vehicle characteristics where it states (on page 3) that consumers have different consideration sets of brands...a market can be divided into a certain number of submarkets in which homogeneous consumers consider a distinctive subset of brands with a particular rule of attribute evaluation and reference to a specific ideal point. While the focus of Cooper may be on market structures, Cooper still must determine brand profiles in order to determine market structures since defining market structures requires establishing consumers' affinities towards brand profiles (see abstract). Thus, Cooper discloses generating a preferred product brand position as a function of product attributes, including identifying a competitive set of products, and associating each of the product attributes with a preferred competitive level with respect to the competitive set and generating target product characteristics as a function of the classified product attributes and the preferred product brand position, the target product characteristics representing customer-driven objectives for each of the plurality of product attributes to be incorporated into the new product as recited in claims 1 and 13.

Examiner notes that claims 1 and 13 do not expressly recite *how* a preferred vehicle brand position is generated, rather, that it is merely a "function" of vehicle attributes. Likewise, claims 1 and 13 do not expressly recite *how* target vehicle characteristics are generated, rather, that they are merely a "function" of vehicle attributes and brand position. Additionally, by using definitions in the Remarks (page 13, Response dated May 17, 2004) not explicitly recited in claims 1 or 13, it appears Appellant intends more specific meanings for "vehicle attributes" and "attribute classes"

Art Unit: 3623

than are in the claims. Thus, it is noted that the features upon which Appellant relies (i.e., "vehicle attributes" and "attribute classes" defined in the Remarks) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Accordingly, it is respectfully submitted that Cooper does provide a method of developing a brand profile for a new product.

In response to argument 2), part (A), Examiner respectfully disagrees. Examiner has shown in response to argument 1) where Cooper discloses placing attributes in attribute classes corresponding to brand personality importance. Accordingly, please refer to response to argument 1), above.

In response to argument 2), parts (B) and (C), Examiner respectfully disagrees. As discussed above, on pages 3, 9 and 10, Cooper discloses generating preferred vehicle brand positions and target vehicle characteristics where it states (on page 3) that consumers have different consideration sets of brands...a market can be divided into a certain number of submarkets in which homogeneous consumers consider a distinctive subset of brands with a particular rule of attribute evaluation and reference to a specific ideal point. While the focus of Cooper may be on market structures, Cooper still must determine brand profiles in order to determine market structures since defining market structures requires establishing consumers' affinities towards brand profiles (see abstract). Thus, Cooper discloses generating a preferred product brand position.

Likewise, on page 2, paragraphs 1 and 4, Cooper discloses objectives for the market structure analysis. Thus, Cooper discloses generating target vehicle objectives as a function of the vehicle attributes and the preferred vehicle brand position, the target vehicle objectives representing customer-driven and image-driven characteristics for each of the plurality of vehicle attributes to be incorporated into the new automotive vehicle.

As discussed in the Final Office Action, Cooper does not expressly disclose providing a cross-functional product team. However, on page 315, Eisner discloses integrated product teams, which include several people of differing specialties who work together towards developing and selling new products. Some functional areas an integrated product team participates in include marketing and sales, research and development, and production. Thus, Eisner teaches that the idea and use of cross-functional teams for the marketing and researching and development of a new product is not novel. Additionally, conducting consumer-market research is a well-known role in the areas of marketing and sales and research and development. (Examiner notes Appellant has not challenged this statement). As such, since Cooper teaches conducting consumer-market research to establish consumer preferences of brand profiles (which someone or some group of people has to execute), it follows that a cross-functional team could be the group of people to execute the consumer-market research in Cooper since Eisner teaches that cross-functional teams participate in marketing and sales and research and development of products. Moreover, at the time of the invention, it would have been obvious to a person of ordinary skill in the art to

have a cross-functional team that generates a vehicle brand position and objectives as doing so allows for various departments from differing business functions/specialties to partake in the vehicle product development, thus, promoting cross-functional consensus on the development of the product.

Accordingly, Examiner respectfully submits the combination of Cooper and Eisner teach the generation of a preferred vehicle brand position through the use of a cross-functional product team and as a function of vehicle attributes, target customer characteristics, and target vehicle brand image characteristics; and the generation of target vehicle objectives by the cross-functional product team as a function of the vehicle attributes and the preferred vehicle brand position as recited in claims 28-30 and 33.

For the above reasons, it is believed that the rejections should be sustained.

(8) *Claims Appendix*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Evidence Appendix*

Appellant did not supply any evidence in the appeal.

(10) *Related Proceedings Appendix*

Appellant did not supply any copies of decisions rendered by a court or the Board as there are no related appeals.

Respectfully submitted,


Catherine Michelle Colon


cmc

May 27, 2005

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